

## **REMARKS**

This Amendment responds to the Final Office Action dated November 3, 2004.

The Examiner rejected claims 1-12, 15-30, and 33-36 under 35 U.S.C. 102(e) as being unpatentable over Kirkby et al. (U.S. 6,498,786). No mention was made of claims 13-14 and 31-32 specifically, but according to the previous Office Action, these claims were rejected under 35 U.S.C 103(a) as being unpatentable over the 102(e) Kirkby reference.

Each claim limitation must be taught by the same reference to establish a 102 rejection. Regarding claim 1, step b requires: "endowing one or more bidding entities with an adjustably fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources." This step allows the success of each bidding entity to be macro-managed. It makes any amount of resource available to an entity if the entity has enough importance (see page 6, lines 22-25). Although the resources may be vitally important to the less important bidding entity, the entity can be allowed to fail to maintain a more important entity (see page 6, lines 1-7). References to the specification are for purposes of clarity and not meant to imply that they should be limitations read into the claim.

In contrast, Kirkby discloses a resource allocation method based on the concept of proportional fairness. A set of users input a willingness to pay for network resources. A controller determines how the users' willingnesses to pay are to be divided between the resources in order to determine the relative demands for the resources. Each resource is then divided between those users using it in proportion to how much they are willing to pay for the use of their share of it. The allocation takes into account the relative demands on all the resources in

the network. A user may increase his share of the network resources allocated to him by increasing the value of his willingness to pay.

Kirkby neither teaches nor suggests the claimed step of "endowing one or more bidding entities with an adjustably fixed amount of utility, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources." Kirkby simply discloses that a set of users have willingness to pay ("WtP") that is used to bid for various resources which are then allocated among the users based on their WtP, with each user receiving a proportional share (see column 3, lines 37-49). As Kirkby does not teach or suggest the endowment of an adjustably fixed amount of utility, the system disclosed by Kirkby cannot provide control of the success or failure of any of the bidding entities. The system disclosed by Kirkby et al. merely allocates resources among bidding users.

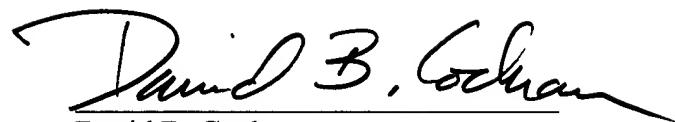
As such, independent claim 1 is patentably distinct over the cited prior art. As claims 2 to 18 are dependent on claim 1, and include all of its limitations, claims 2 to 18 are also patentably distinguished from the cited prior art.

As the Examiner noted, independent claim 19 also discloses similar limitations to those of claim 1 and, as a result, claim 19 is patentably distinct from the cited prior art. As claims 20 to 36 are dependent on claim 19, and include all of its limitations, claims 20 to 36 are also patentably distinct from the cited prior art.

For the foregoing reasons, retraction of the Examiner's rejection of the claims is respectfully requested. It is believed that the application, as now presented, is in condition for allowance.

Respectfully submitted,

JONES DAY



David B. Cochran  
(Reg. No. 39,142)

Jones Day  
North Point, 901 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 586-7029